

1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH DAKOTA
3 SOUTHERN DIVISION

3 EMIL FLUTE and) Civil Action No. 18-4112
4 PATRICIA FLUTE,)
5))
6 Plaintiffs,)
7))
8 vs.)
9))
10 UNITED STATES OF AMERICA,)
11))
12 Defendant.)
13

10

11 DEPOSITION OF LAURA DONOHUE

12

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14 Taken on behalf of the Plaintiffs at 224 South Bluff
15 Street, Winnebago, Nebraska, on Wednesday, May 19, 2021,
16 at 8:13 a.m.

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21 Court Reporter: Marcia L. Mahon, CSR, RPR
22 MM Court Reporting
23 1402 Elgin Avenue
24 South Sioux City, NE 68776
25 (712) 259-2625

24 * * * *

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1 A P P E A R A N C E S

2

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23 Also Present: Emil Flute

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Examination by Mr. King at 8:13 a.m.	4
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Certificate of Reporter	52

* * * *

No exhibits marked.

1 LAURA DONOHUE,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 By Mr. King at 8:13 a.m.:

5 Q Good morning!

6 A Morning.

7 Q What is your name?

8 A Laura Donohue.

9 Q Laura, tell me about you. Where do you
10 live?

11 A I live in Le Mars, Iowa. Born and raised.

12 Q How old are you, Laura?

13 A 51.

14 Q Are you married?

15 A I am divorced.

16 Q How many kids do you have?

17 A Two kids, three grandkids.

18 Q Have you ever testified in court before?

19 A No.

20 Q Have you ever had your deposition taken
21 before?

22 A No.

23 Q Well, a deposition is a legal statement
24 under oath, and it is -- you know, it's taken down
25 by a court reporter. We need oral responses. So

1 like when you just nodded your head, I know exactly
2 what you mean. It's just we need oral responses
3 today.

4 A Okay.

5 Q Does that sound fair?

6 A Okay.

7 Q So what do you do at Twelve Clans?

8 A I am a nurse in the outpatient clinic.

9 Q Tell me about your job duties.

10 A I am in charge of the telemedicine. We
11 have specialists from all over the country. Kind of
12 do Zoom meetings for the specialty clinics:
13 endocrinology, gastroenterology, rheumatology,
14 psychiatry, internal med.

15 Q Podiatry as well?

16 A No.

17 Q So do you know Emil Flute?

18 A He is one of my telemed patients.

19 Q And did you work for Indian Health
20 Services at the Winnebago Hospital in April of 2017?

21 A Yes.

22 Q What did you do for them?

23 A 2017? I'm not sure what department, where
24 I was at. Either ER or inpatient. I don't think I
25 was in the outpatient yet.

1 Q Okay. And tell me about the Winnebago
2 Indian Health Service Hospital in 2017.

3 A I honestly don't remember if that's when
4 we were switching over to the tribe. I don't
5 honestly remember 2017. I have been here since
6 2004.

7 Q Do you know Dr. Horlebein?

8 A Was he the podiatrist?

9 Q Yeah, he was.

10 A I didn't have much interaction with him.

11 Q Why is that?

12 A I think I was down in the clinic, but the
13 podiatry department was upstairs. So podiatry would
14 have been on the second floor. Outpatient clinic is
15 on the main floor.

16 Q Do you know Patricia Flute?

17 A Yes.

18 Q Nice lady?

19 A Yes.

20 Q And how would you describe Emil Flute?

21 A He has been very cordial to me. I haven't
22 had any adverse interactions with him.

23 Q Nice man?

24 A Yes.

25 Q Are you aware that he has rheumatoid

1 arthritis?

2 A Yes.

3 Q And how did you become aware of that?

4 A When his provider would have put in a
5 consult for him to see the telemedicine
6 rheumatologist. I believe that's what we were
7 seeing him for.

8 Q So I represent Emil and his wife Patricia
9 in a claim against the federal government, the IHS,
10 as a result, we allege, of the repeated use of some
11 podiatry instruments, okay?

12 A Okay.

13 Q Are you aware of that issue?

14 A I had heard things. That's why he was
15 gone, and there was some issues, and they had to do
16 some testing, but direct interaction? No.

17 Q Okay. So you don't know much about this
18 case?

19 A I do not.

20 Q All right. Who did you talk to in
21 preparing for your deposition today?

22 A I think I talked with Delia over a year
23 ago. We were supposed to talk yesterday, and I had
24 jury duty, and so David had advised me to not look
25 into anything, and I have not. So I don't know much

1 about this.

2 Q Sure. So as part of your job duties in
3 2017, was it your -- did you have any -- anything to
4 do with the sterilization of the equipment?

5 A Absolutely not.

6 Q Did you have anything to do with the
7 checking in and checking out of the sterilized
8 equipment?

9 A No.

10 Q You had very little contact with the
11 podiatry clinic?

12 A Correct.

13 Q You don't dispute that Mr. Flute was a
14 patient of the hospital --

15 A Correct.

16 Q -- in 2017. Do you know whether or not
17 the podiatry clinic was using single-use?

18 A I do not.

19 Q Were you instructed on OSHA standards as
20 part of your training?

21 A Oh, I'm sure when I started in 2004, '5.

22 Q Where did you go to school at?

23 A Sioux City, at Western Iowa Tech.

24 Q What high school did you go to?

25 A Le Mars Community.

1 Q What year did you graduate?

2 A '87.

3 Q What year did you graduate from WIT?

4 A I was a late bloomer. I graduated in '99.

5 Q What was your degree in?

6 A Nursing. Associate's degree in nursing.

7 Q Two-year program?

8 A Yes.

9 Q Have you had any additional training since
10 that time?

11 A Schoolwise? No.

12 Q Were you trained in the sterilization of
13 medical equipment as part of your training at WIT?

14 A No.

15 Q Was it limited to a certain type of
16 nursing, your training?

17 A No. It was -- first year it was LPN,
18 licensed practical nurse, and the second year was
19 registered nurse.

20 Q And you're still a -- fully licensed and
21 all of that stuff?

22 A Yes.

23 Q Do you know Elizabeth Roberts?

24 A Yes.

25 Q Sophia Perttula?

1 A Yes.

2 Q Crystal Shields?

3 A Yes.

4 Q How do you know Elizabeth Roberts?

5 A Coworker, former coworker.

6 Q Where did she work?

7 A I believe it was on the inpatient floor.

8 Q Okay. Which floor is the inpatient floor?

9 A The second floor.

10 Q And where do they sterilize the podiatry
11 equipment at?

12 A On the second floor. There is a separate
13 area.

14 Q And she worked on the second floor?

15 A Yes, I believe.

16 Q And do you know what specific unit, I
17 guess you would say, she was assigned to?

18 A Specifically, I would have to say the
19 inpatient.

20 Q Do you know whether or not Mr. Flute,
21 during that time frame, was treated on an inpatient
22 or outpatient basis?

23 A I do not know for sure.

24 Q Have you ever reviewed Mr. Flute's medical
25 records?

1 A Just my portion when I have had to do with
2 the telemed. Regarding this? No.

3 Q What can you tell us about Mr. Flute's
4 medical condition?

5 A Honestly, off the top of my head, I can't
6 even tell you which doctor he spoke with. He has
7 been going to another one. We haven't had follow-up
8 for a while, so I have had not had any contact in
9 his chart recently.

10 Q We know that he has rheumatoid arthritis.

11 A Yes.

12 Q And does he have diabetes as well?

13 A I'm not for sure.

14 Q Do we know that he has podiatry issues,
15 medical issues?

16 A I do not know that for sure.

17 Q And Sophia Perttula?

18 A She's a former coworker on the inpatient
19 floor.

20 Q And what happened to Sophia Perttula?

21 A Regarding?

22 Q Was she fired? Did she quit?

23 A I don't know.

24 Q Do you know her socially?

25 A No.

1 Q Do you know Elizabeth Roberts socially?

2 A No.

3 Q How about Crystal Shields?

4 A No.

5 Q You don't socialize with coworkers outside
6 of work?

7 A I live in Le Mars. It's an hour away.

8 Q So that's a no?

9 A I do socialize with some coworkers. Those
10 three in particular, no.

11 Q Who do you socialize with?

12 A Elizabeth Dreesen. Heather Petersen, the
13 case work managers up there, Aftan Phipps.

14 Q Are any of those people your superiors?

15 A Elizabeth Dreesen is the supervisor.

16 Q What does she supervise?

17 A The outpatient clinic.

18 Q Was she the supervisor back in 2017?

19 A I don't believe so.

20 Q And Crystal Shields, what was her job?

21 A She was also inpatient, I believe.

22 Q Did you work with her much?

23 A No.

24 Q His blood work -- Emil's blood work was
25 done here at Winnebago, IHS.

1 A I would assume. I don't know. I don't
2 have any part of the lab.

3 Q What do you know about Dr. Horlebein's
4 employment with IHS?

5 A I just know that it was terminated.

6 Q Do you know why?

7 A I had heard rumors after the fact, but as
8 a definite, I don't believe they ever gave a
9 statement.

10 Q What rumors did you hear?

11 A Just that he was reusing equipment, and
12 then it was -- it was just a handle, but that's
13 all -- that's all I ever really heard.

14 Q Are you aware of any complaints against
15 Dr. Horlebein?

16 A Yes. I had heard there were a few.

17 Q By staff?

18 A Oh, no. Just concerned citizens. I had
19 to take some phone calls about people wondering
20 about testing.

21 Q What were concerned citizens saying?

22 A They were concerned they were going to
23 catch something because of his practice. We just
24 gave them basic information, and I believe they had
25 someone designated to assist the patients with

1 testing.

2 Q The patients where he had reused the
3 chisel blade handle?

4 A Right.

5 Q Who was that person that they designated?

6 A I don't remember.

7 Q Is that person still here?

8 A I don't know.

9 Q Do you know who Carla Hallum is?

10 A Yes.

11 Q Who is Carla Hallum?

12 A She's a former coworker. She worked on
13 the second floor.

14 Q What did she do on the second floor?

15 A Inpatient, I believe.

16 Q Was she a supervisor?

17 A No.

18 Q What level was she on, do you know?

19 A Just RN.

20 Q Now, according to the medical records,
21 Mr. Flute had an open ulcer on his left foot.

22 A Okay.

23 Q And do you know what an open ulcer is?

24 A Yes.

25 Q What's an open ulcer?

1 A Normally around here it's the diabetic
2 open ulcer where it's through the second stage
3 thickness of the foot.

4 Q What does second stage thickness of the
5 foot mean?

6 A Past the epidermis and into the dermis
7 usually. Sometime if it's in the third stage where
8 it goes into the muscle.

9 Q Is that more subject to infection?

10 A Yes.

11 Q Why is that?

12 A It's deeper into the tissue, it's harder
13 to heal.

14 Q Why does that usually develop?

15 MS. DRULEY: Objection. Beyond the scope
16 of this deposition. She's not designated as an
17 expert witness.

18 Q Thank you. Go ahead.

19 A Most of the time it's related to diabetes.
20 If the blood sugars are out of control, you get more
21 increased infections, especially in your feet due to
22 numbness and tingling diabetic neuropathy. Don't
23 notice the sore is there, and it goes deeper. It's
24 harder to heal.

25 Q Doesn't have the protection of the outer

1 layer of skin, right?

2 A Correct. The outer layer is gone.

3 Q And Mr. Flute was on, and is on -- let me
4 ask a different question.

5 Mr. Flute is immunocompromised. Is
6 that true?

7 A I do not know what medications he is on.
8 If he is on any biologics, I don't know.

9 Q Is somebody with rheumatoid arthritis, do
10 they have a medical disorder of their immune system?

11 A Yes.

12 MS. DRULEY: Again, I want to object.
13 It's beyond the scope of jurisdictional
14 discovery, and she's not designated as an
15 expert for either party. Go ahead and answer.

16 A Yes.

17 Q And in a person with rheumatoid arthritis,
18 it's an autoimmune disease, right?

19 MS. DRULEY: Same objection.

20 A Correct.

21 Q And an autoimmune disease means that your
22 own system, your own immune system is attacking --
23 well, in rheumatoid arthritis -- your joints.

24 MS. DRULEY: Again, same objection.

25 A Correct.

1 Q And it attacks the synovial fluid; is that
2 right?

3 MS. DRULEY: Same objection.

4 A Correct.

5 Q What is the synovial fluid?

6 A It's in between the joint spaces.

7 Q So I'm going to refer you to a medical
8 record dated 5-10 of '17 for Mr. Flute, which was
9 signed by John Horlebein, and I'll have you read
10 that for me.

11 A Do you want me to read it out loud?

12 Q No. Just read it to yourself.

13 So you've had an opportunity to
14 review that report.

15 A Just right now.

16 Q And I had earlier incorrectly said left
17 foot, but according to the medical record, and
18 according to Mr. Flute, it's right foot.

19 A Correct.

20 Q And it says he has an RA nodule plantar
21 ulcer in the record; is that correct?

22 A I guess. I don't have it in front of me
23 now to review again.

24 Q And it talks about a sterile dressing that
25 was used.

1 A Talks about a TL Adhesive dressing.

2 Q What's a TL Adhesive dressing?

3 A Just a brand. A special -- I don't --

4 Q Not something you --

5 A I just know it's --

6 Q -- work with?

7 A -- a dressing. I don't. It's a type of
8 dressing that they have upstairs.

9 MS. DRULEY: David, can I just have a
10 standing objection to this line of questioning
11 so I don't have to interrupt you? That it's
12 beyond the scope of jurisdictional discovery.
13 She didn't actually treat this patient, and
14 she's not designated as an expert, and then
15 I'll let you go without interrupting.

16 Q You're fine.

17 What is Xeroform?

18 A It's another type of dressing. It's a
19 Vaseline gauze.

20 Q And then it says one percent SSD cream.

21 A Sulfa -- I believe it's sulfasalazine
22 cream. It's just a medicated ointment.

23 Q And it says that the dressing changes with
24 modified postop shoe. Is that correct? You can
25 look at the record again if you would like.

1 A Modified postop shoe, and I don't know
2 what those insoles are.

3 Q That's fine.

4 A Maybe a special insole.

5 Q And in terms of the ulcer, it says that
6 there is an ulcer present. What does that mean?

7 A A sore, open area.

8 Q And then it says, focused PE. Do you know
9 what that means? Does that mean physical exam?

10 A Yes.

11 Q And then it says, right foot sub third MPJ
12 ulcer. Do you know what that means?

13 A All right. So right foot -- would be the
14 third toe at the MP joint.

15 Q What's the MP joint?

16 A On your toe, this is your MP (indicating).

17 Q So right at the base?

18 A Yes. I would assume underneath.

19 Q Then it says there is a positive
20 debridement. What does debridement mean?

21 A Where they would take a tool and clean off
22 the dead areas.

23 Q Surgical tool?

24 A Correct.

25 Q And then there is a measurement that says

1 three millimeters times three millimeters one
2 millimeter depth.

3 A Right. So that's the size of the ulcer
4 that Dr. Horlebein would have measured. Those are
5 his measurements. So it's three millimeters across
6 by three millimeters wide, and one millimeter deep.

7 Q Okay. Is it the policy, or was it the
8 policy in 2017 that a doctor would meet with a
9 patient alone, or would he always have a nurse with
10 him?

11 A I'm not sure. I didn't work with Dr.
12 Horlebein.

13 Q There is a statement there that says
14 granular wound base. What does that mean?

15 A The base of the wound was red and looked
16 granular. So it was -- if it's red, usually that
17 means the skin is alive.

18 Q And it says under the assessment, healing
19 RA male preference ulcer subthird MPJ of the right
20 foot; is that right, under the assessment part?

21 A Yes.

22 Q And then the plan was a debridement?

23 A Yes.

24 Q And what's a debridement?

25 A It's where they clean out the dead tissue.

1 Q Surgical procedure?

2 A Well, invasive.

3 Q When you use the term "invasive," what do
4 you mean?

5 A It's an invasive procedure where we have
6 to have consent and a time out.

7 Q Sure. And invasive also means it's inside
8 the body, right?

9 A Yes.

10 Q On Mr. Flute's 5-4-17 medical record, also
11 signed by Dr. Horlebein, it says at the bottom,
12 wound care was rendered and a dressing was applied.

13 A Uh-huh. Yes.

14 Q When they say "dressing," is that sterile
15 or unsterile, do you know?

16 A I do not know.

17 Q Are some sterile and some not sterile
18 dressings?

19 A We use all sterile supplies. It just
20 depends on how he wrote the order.

21 Q I'm going to have you look at the record
22 from 5-3 of '17. Under the plan, it indicates a
23 sharp debridement. Did I get that right?

24 A Yes.

25 Q Do you know what a sharp debridement is?

1 A I don't.

2 MS. DRULEY: Objection. Asked and
3 answered, and I'm going to reassert that it's
4 outside of jurisdictional discovery. She
5 didn't provide podiatry patient care and she is
6 not designated as an expert. Go ahead and
7 answer.

8 A The difference between a sharp debridement
9 and just debridement, I do not know the difference.

10 Q Okay. That's fair. In your experience
11 with Mr. Flute, was he compliant with his treatment?

12 A I honestly don't recall. It's been over a
13 year, I believe, since I have had him in my telemed
14 clinic, and we do some of the follow-ups by
15 telephone calls.

16 Q And I'll have you look at this record of
17 4-28.

18 A (Witness complies.)

19 Q Have you had an opportunity to look at
20 this?

21 A Yes.

22 Q And it describes -- the medical records
23 identify Mr. Flute as a high-risk RA patient.

24 A Okay.

25 Q Is that accurate?

1 A I don't know.

2 Q Okay. It's accurate based on the medical
3 record.

4 A Right.

5 Q Do you know what a high-risk RA patient
6 is?

7 A From what I know, it would be one that's
8 on biologics. It puts them at increased risk of
9 infections. I do not know what medications
10 Mr. Flute is on.

11 Q Did you ever work in RA, or the -- with
12 the rheumatologist here?

13 A No. Just the telemed.

14 Q Were you ever interviewed by Indian Health
15 Service with regard to anything related to John
16 Horlebein?

17 A No.

18 Q Were you ever involved in any review
19 committee of the medical records on Mr. Flute?

20 A No.

21 Q I'm going to have you read the medical
22 record for Mr. Flute of 4-24-17.

23 A (Witness complies.)

24 Q Have you had an opportunity to review that
25 record?

1 A Yes.

2 Q And it talks about -- and I'm quoting
3 here, "Assessment: A patient with significant
4 dislocated MPJ's" -- I'll just kind of restart with
5 it.

6 "A patient with significant
7 dislocated MPJ's of the right foot causing a
8 pressure ulcer subthird MPJ," and that's the ulcer
9 that you mentioned previously, correct?

10 A Correct.

11 Q And they had taken a measurement that day,
12 and it was an eight millimeter diameter down from 25
13 millimeters.

14 A Correct.

15 Q And then it says on the plan, light
16 peri-callus debridement, one percent SSD cream,
17 Xeroform, one-quarter inch felt, forefoot pad with
18 tincture of benzoin to peridskin (sic) regions,
19 gauze dressing, apply tennis shoe. That's at the
20 plan portion of that record. Is that accurate?

21 A Yes.

22 Q Does that describe a surgical procedure?

23 A I'm not sure. I'm not sure what a light
24 peri-callus debridement is.

25 Q Okay. That's fair. Do you know what

1 benzoin is?

2 A It's a little brown -- comes usually on a
3 Q-tip, and you put it around the wound. We use it
4 for Steri-Strips, makes them stick.

5 Q What does peridskin (sic) regions mean?

6 A I do not know.

7 Q So there was a letter written by Kevin
8 Stiffarm, acting CEO, Department of Health and Human
9 Services, Public Health Service, to Mr. and Mrs.
10 Flute. Have you ever seen that letter?

11 A No.

12 Q Are you aware that a letter went out from
13 DHS?

14 A Yes.

15 Q How did you become aware of that?

16 A I don't know if it was in an email, or if
17 they had a meeting, where they just kind of told us
18 very little of what happened, but they were sending
19 out -- it was more so because the nurses were going
20 to be getting the phone calls from these patients.

21 Q And what did they tell you to tell the
22 patients that called in?

23 A I don't recall specifically. It was more
24 of a yes, we'll do the testing. It was a lot of
25 calming people down, you know. I had one lady I had

1 to bring her into my office. She was very upset.

2 But as to who did the setting up of the labs, the

3 appointment, I don't recall.

4 Q Were you involved in any of the testing?

5 A No.

6 Q Who did the testing on the affected

7 patients?

8 A Whatever lab personnel.

9 Q Do you know how the contamination was
10 discovered?

11 A I am not.

12 Q Are you aware that the podiatry clinic in
13 2017 was temporarily closed?

14 A Before or after?

15 Q After.

16 A After, yes.

17 Q And how did you become aware of that?

18 A We do some of the scheduling, and told not
19 to schedule.

20 Q How long was it closed, do you know?

21 A I don't know.

22 Q And then they talked about implementing
23 procedures to ensure future incidents like this
24 don't occur.

25 Do you know what procedures were

1 implemented to ensure that future events like this
2 don't occur?

3 A I do not.

4 Q In the recommendations from the Department
5 of Health and Human Services -- and I just had you
6 review the letter -- recommended that patients of
7 the hospital be tested for hepatitis B, hepatitis C,
8 and HIV.

9 A Correct.

10 Q And it sounds like -- do you know how many
11 patients were affected, by the way?

12 A For some reason I'm thinking 35. I'm not
13 positive on that.

14 Q And you have worked here since 2004?

15 A Correct.

16 Q And you were aware that in 2015 the
17 hospital lost Medicaid funding, right?

18 A Correct.

19 Q Why was that?

20 A The specifics, I don't remember.

21 Q Was it due to poor patient care?

22 A I don't remember what the -- the final
23 reason was.

24 Q Did it lead to a patient death, do you
25 know?

1 A I don't know.

2 Q Who did Winnebago IHS treat?

3 A Native Americans.

4 Q Did they have to be a member of a certain
5 tribe?

6 A No.

7 Q How do you determine if somebody is Native
8 American?

9 A How do I personally?

10 Q Do you know how they determine whether --

11 A They ask for a tribal enrollment card,
12 birth certificate, Social Security numbers,
13 descendancy.

14 Q Whose job was it to sterilize the blade of
15 the instrument, do you know?

16 A Probably Heather Mentzer.

17 Q Does any doctor that you have worked with
18 sterilize their own equipment?

19 A I don't know.

20 Q Are you aware of any doctor here that's
21 sterilized their own equipment?

22 A We don't -- Heather is the only one that
23 does the sterilizing. It's a separate room.

24 Q Done in a separate area?

25 A Yes.

1 Q You were an employee in 2017 of the
2 Department of Health and Human Services.

3 A IHS, yes.

4 Q And when you say IHS, you mean Indian
5 Health Services?

6 A Indian Health, yes.

7 Q The hospital retains full control over the
8 sterilization of the medical equipment; is that
9 correct?

10 A I believe so.

11 Q Do you know what a quality improvement
12 program is?

13 A Yes.

14 Q What is it?

15 A Something we do to see what we can improve
16 on a specific incident.

17 Q Was there a quality improvement program
18 put in place after the Horlebein incidents?

19 A I don't know. I'm not part of the QAPI.

20 Q Not to your knowledge?

21 A I don't know. I don't have anything to do
22 with the QAPI, Q-A-P-I.

23 Q The hospital -- admission of the hospital
24 then and now, 2017 and now, is to provide the best
25 possible health care services to Native American

1 populations it serves; isn't that right?

2 A To improve the well-being of the
3 community, providing patient-centered health care
4 that is respectful of tribal beliefs.

5 Q For the clinics, the outpatient clinics in
6 2017, IHS provided the nursing staff, correct?

7 A In 2017? Yes.

8 Q And all the equipment that's used in the
9 outpatient clinics is provided for -- was provided
10 for by IHS.

11 A I don't know where they buy their
12 equipment. I'm not part of purchasing.

13 Q I guess maybe I asked a bad question. So
14 I'll try to rephrase it a little bit.

15 IHS provided, regardless of where
16 they got it from, they provided the medical and
17 non-medical equipment and supplies used in the
18 outpatient clinics.

19 A Yes.

20 Q And the staff in the outpatient clinics
21 were provided for -- the nursing staff, the support
22 staff were supplied by employees of IHS.

23 A Generally. We may have had some contract
24 nurses. I don't recall.

25 Q All employees at IHS in 2017 had an

1 obligation to disclose waste, fraud, abuse and
2 corruption to appropriate authorities; is that
3 right?

4 A Correct.

5 Q Did you ever report any?

6 A No.

7 Q Did you know Dr. Virgilio Cantu?

8 A Yes.

9 Q Did I pronounce his first name right?

10 A No.

11 Q How do you pronounce it?

12 A Virgilio. He went by Virgil.

13 Q How long was he here?

14 A Two years possibly.

15 Q What happened to him?

16 A He and his wife moved.

17 Q Where did they move to?

18 A At that time I think they moved to New
19 York where his wife was from.

20 Q So Dr. Virgil Cantu, would he have been
21 the supervisor of Horlebein?

22 A I don't know.

23 Q Are you on the medical staff?

24 A You mean just an employee, or the medical
25 board? What do you mean?

1 Q The United States government has produced
2 some documents in this lawsuit, and one of the
3 documents that they produced was called
4 Omaha-Winnebago Medical Staff Bylaws, Rules and
5 Regulations of the Great Plains Indian Health
6 Service.

7 A I have never seen that.

8 Q Okay. Is there an infection control
9 program here at the hospital?

10 A We do have an infection control nurse.

11 Q Who is the infection control nurse?

12 A Mandy, and her last name is Parker.

13 Q How long has she been with Twelve Clans?

14 A A year.

15 Q Do you know who would have done that --
16 served in that role in 2017?

17 A I do not.

18 Q Do you know whether or not they had an
19 infection control?

20 A I do not.

21 Q Are the staff here trained in the
22 cleaning, processing, packaging, distributing,
23 storing, and inventory control of sterile goods,
24 instruments, surgical trays and medical equipment?

25 A No.

1 Q Why aren't they trained in that?

2 A We have a designated person who does it,
3 and she has a backup.

4 Q And the designated person would be Heather
5 Mentzer?

6 A Yes.

7 Q Is she still here?

8 A Yes.

9 Q Do you know why it took so long for Dr.
10 Horlebein's situation to be discovered?

11 A I do not. I did not work up there with
12 him.

13 Q Do you know who the nurse was that noticed
14 the physician had improperly sterilized the
15 instrument?

16 A I do not.

17 Q So the government in an answer to an
18 interrogatory indicated in answer 4 (c) that the
19 following staff members were involved in the
20 treatment of plaintiff, instrument sterilization
21 and/or scheduled to work in outpatient podiatry on
22 April 24, 2017.

23 Dr. John Horlebein, MSA Aaron
24 Johnson. Do you know, what does MSA mean?

25 A I think it stands for medical staff

1 assistant. It's like a secretary.

2 Q Is Aaron Johnson still here?

3 A Yes.

4 Q Is Aaron a man or a woman?

5 A Male.

6 Q What does he do now?

7 A He is still an MSA. I believe he works
8 nights in the ER.

9 Q And then it says, RN Elizabeth Roberts,
10 Sarah Robertson, Sophia Perttula, Genevieve
11 Pipeonhead, Laura Donohue, Felicia Parker, and
12 Heather Mentzer.

13 Do you know why they would have
14 identified you as a witness?

15 A I don't.

16 Q Have you ever had work with a
17 sterilization log?

18 A No.

19 Q That was Heather Mentzer's job?

20 A Yes.

21 Q And you still have central supply here.

22 A Yes.

23 Q In the government's answer to
24 Interrogatory No. 9, it says, RN Laura Donohue was
25 scheduled to work at the outpatient department on

1 April 24. That indicates that you were working that
2 day.

3 A Okay.

4 Q You don't have any reason to dispute that?

5 A I would have to look at my calendar, but I
6 don't know if I was here or wasn't here.

7 Q You don't know of any reason why the
8 government's under oath answer wouldn't be right.

9 A No.

10 Q Did I get your home address?

11 A No.

12 Q Can I have your home address?

13 A 1027 3rd Street SE, Le Mars, Iowa.

14 Q Are you aware of the five-page CDC
15 Infection Prevention and Control Assessment at the
16 Omaha Winnebago Indian Health Service podiatry
17 clinic from July of 2017?

18 A I would have to see it to know if I
19 recognized it.

20 Q That doesn't --

21 A It doesn't ring a bell.

22 Q You don't know when the hospital
23 discovered the failure to properly clean and
24 sanitize the chisel blade between patients.

25 A I do not.

1 MS. DRULEY: Objection. Can we just
2 clarify, chisel blade handle.

3 Q Okay.

4 A I do not.

5 Q Do you know when the failure to sanitize
6 the chisel blade handle first was discovered?

7 A I do not.

8 Q Do you know who was it initially reported
9 to? Do you know that?

10 A I do not.

11 Q Elizabeth Roberts no longer works here?

12 A Correct.

13 Q What happened to her, do you know?

14 A She moved.

15 Q Where did she move?

16 A I don't know.

17 Q Did IHS in 2017 double-book appointments
18 with patients?

19 A I would have to look at the scheduling.

20 Q What does double-book mean?

21 A Book two patients at the same time.

22 Q At any of the outpatient clinics that you
23 have worked with here at the Winnebago unit, did
24 they double-book --

25 A Yes.

1 Q -- patients?

2 A Yes.

3 Q Why do they do that?

4 A We have a high no show rate.

5 Q So because of that, it's routinely --
6 patients are routinely --

7 A Not routinely. If we have somebody that
8 has a high no show rate, pretty sure they are not
9 going to show up, we'll double-book at that same
10 time so that slot doesn't go empty.

11 Q Who is in charge of booking the
12 appointments?

13 A The MSAs and the nurses.

14 Q Have you ever personally ever
15 double-booked appointments?

16 A Yes.

17 Q And that was done in 2017?

18 A I don't know.

19 Q Well, you have been here since 2004.

20 A Correct.

21 Q During that entire time, have they been
22 double-booking?

23 A No.

24 Q When did the double-booking start?

25 A Off and on. I don't know when it started.

1 We used to triple-book. I don't know what years,
2 when, what months.

3 Q That still goes on?

4 A We just recently started double-booking
5 again.

6 Q And that's like a hospital policy to
7 double-book?

8 A I don't believe it's a policy. It's a
9 recommendation.

10 Q Is it a written recommendation, or what is
11 it?

12 A I haven't seen anything written. I just
13 know that they want us to see more patients.

14 Q And they -- how big is Twelve Clans
15 Hospital?

16 A What do you mean, "how big"? The square
17 footage, I don't know. Inpatient, there's 18 beds,
18 I believe. I don't know how many employees they
19 have.

20 Q And they have an ER?

21 A And an ER, correct. There is also dental
22 and optometry, behavior health, public health,
23 transportation.

24 Q When I have looked at the government's
25 discovery responses, there is nothing in the

1 protocols or rules that they have produced that
2 identifies a double-booking or a triple-booking
3 procedure. That would be accurate, it's not in
4 writing?

5 A I'm not sure if it's in writing.

6 Q You have never seen it?

7 A I have never seen it, no.

8 Q It's more of a practice?

9 A It's a recommendation for us to be more
10 productive, see more patients.

11 Q And the recommendation is from the
12 higher-ups?

13 A Correct.

14 Q In 2017 -- in April of 2017, you know, the
15 person in charge was Dr. Cantu.

16 A Okay.

17 Q Is that correct?

18 A I don't remember.

19 Q When Dr. Cantu was here, do you know what
20 his title was?

21 A No.

22 Q Was he clinical director of IHS Winnebago
23 Hospital and Clinic?

24 A Possibly. I don't remember.

25 Q Are you aware of anyone higher than him at

1 that time?

2 A I'm not aware of -- are you talking just
3 in the clinic, or are you talking administration?

4 Q Administration.

5 A Well, there would be a CEO. I don't know
6 how the levels go.

7 Q Are some surgical instruments single-use
8 instruments?

9 A Yes.

10 Q And when we use the term "single-use
11 instrument," what does that mean?

12 A One patient, one time, dispose of it in
13 the sharps.

14 Q How is it disposed of, do you know?

15 A In the sharps. That's what we have
16 currently right now.

17 Q And it used to be multi-use; is that
18 correct?

19 A Correct.

20 Q When was that change made?

21 A When they did the reconstruction of our
22 central supply and sterilization area this year.

23 Q What did they do up there?

24 A I was never inside it. Remodeled.

25 Q Did you like Dr. Horlebein?

1 A I didn't really interact with him. He was
2 polite. I never had any conversations with him. I
3 don't know where he was from.

4 Q What happens to a multi-use -- what did
5 happen to multi-use surgical equipment in 2017 after
6 it was used?

7 A In the outpatient department, we would
8 take that dirty instrument, put it in a biohazard
9 bag, bring it into our dirty utility room. There
10 was a pan -- a metal pan in there with a lid. Dump
11 it in there and we would spray it with some kind of
12 solution. Put the lid on it, and call Heather.

13 Q All right. So I'm going to write this
14 down just so I get it right.

15 So after a multi-use surgical
16 equipment was used on a patient in 2017, what
17 happened with that piece of equipment? You started
18 talking about a bag.

19 A Put it in a biohazard bag. Then it was
20 taken to the dirty utility room, emptied into -- at
21 the time it was a metal pan, I believe, and we
22 sprayed it. I don't know what the name of the
23 solution was. We would spray it, cover it, and we
24 would call Heather, or she would come and check it
25 every morning.

1 Q Okay. So whose job was it to put the used
2 surgical equipment into the biohazard bag?

3 A The nurse that was working with the
4 provider.

5 Q And who is in charge of walking it down to
6 the dirty utility room?

7 A Usually the nurse.

8 Q Who put it in the metal pan?

9 A The nurse.

10 Q Who sprayed it with the solution?

11 A The nurse.

12 Q So all of those functions would have been
13 done by the -- by an employee of IHS then, Twelve
14 Clans now -- a nurse. Yes?

15 A Yes.

16 Q Did you say yes?

17 A Yes.

18 Q I saw you nod your head. Just had to have
19 an oral response.

20 So when is it put in the biohazard
21 bag after it's used?

22 A After the procedure is done.

23 Q And that's standard procedure right there,
24 correct?

25 A Yes.

1 Q And that procedure was the proper
2 procedure in 2017.

3 A Correct.

4 Q And that procedure was established by the
5 Department of Health and Human Services, IHS. In
6 other words, it was a hospital policy?

7 A Yes. We had a policy.

8 Q And you're familiar with that policy?

9 A I would have to pull it up. I don't know
10 what it says word for word.

11 Q But generally --

12 A Yes.

13 Q -- what you walked me through is correct.

14 A Yes.

15 Q And it's under oath.

16 A Yes.

17 Q And it was never any individual doctor's
18 job to decontaminate and sterilize the medical
19 equipment, to your knowledge?

20 A Down here? No. Upstairs in podiatry, I
21 don't know what Dr. Horlebein -- what his practice
22 was. I never worked with him.

23 Q But this practice that you identified --

24 A Down here in the clinic, yes.

25 Q Well, podiatry is also a clinic, right?

1 A It is a clinic. It's not on the main
2 floor. It's on a separate floor.

3 Q But other than being on a separate floor,
4 it's still an outpatient clinic, correct?

5 A Correct.

6 Q And the same policy applied all across the
7 hospital.

8 A Correct. But like I said, I don't know
9 what Dr. Horlebein's practices were, if he did it
10 himself.

11 MR. KING: Do you mind if I take a break?

12 MS. DRULEY: That's fine.

13 (Recess taken at 9:33 to 9:41 a.m.)

14 Q So you worked under nursing services, a
15 supervisory clinical nurse.

16 A I was not a supervisor.

17 Q Who was your boss?

18 A In '17?

19 Q Yep.

20 A Maybe Tracy Jones. I'm not sure.

21 Q Who is your boss now?

22 A Elizabeth Dreesen.

23 Q Is her title supervisory clinical nurse?

24 A I believe so.

25 Q And I'm just looking at an organizational

1 chart that was provided to me by the government.

2 You are not a nurse practitioner, right?

3 A Correct.

4 Q They identified a practical nurse, an LPN,
5 ambulatory case manager. That was not you.

6 A Correct.

7 Q They identified a clinical nurse. Was
8 that your job?

9 A I am a clinical nurse, yes.

10 Q And I'm referring to DEF 249, 250, 251.

11 It says the registered nurse is responsible and
12 accountable for the care provided and for assuring
13 the safety and well-being of the client. Is that
14 accurate?

15 A Yes.

16 Q As part of the job duties of the title of
17 clinical nurse, one of the job duties is to maintain
18 an environment conducive to safety and well-being of
19 patients.

20 A Okay.

21 Q Does that sound right?

22 A Yes.

23 Q Part of the knowledge required is
24 knowledge of the standards of practice prescribed by
25 the state board of nursing and the nursing

1 profession. Is that accurate?

2 A Can you repeat that?

3 Q Part of the knowledge required for your
4 position in 2017 as a clinical nurse was knowledge
5 of the standards of practice prescribed by the state
6 board of nursing and the nursing profession,
7 correct?

8 A Correct.

9 Q Part of the duties required for an
10 outpatient nurse -- and I'm referring to defense
11 260 -- is to maximize the client's health by
12 retaining professional accountability for nursing
13 care when assigning or delegating nursing
14 interventions. Is that accurate?

15 A Yes.

16 Q What does point of use mean?

17 A In regards to?

18 Q Well, I'm looking at DEF 280, and it's a
19 Twelve Clans policy on decontamination, point of
20 use, preparation, and transport. It was originated
21 in June of 2018, and approved, and you're familiar
22 with that policy, right?

23 A I would have to look at it again. We have
24 hundreds of policies.

25 Q I understand.

1 (A brief recess taken)

2 Q So we had a little break, but during that
3 break, I had you look at the decontamination, point
4 of use, preparation, and transport policy of Twelve
5 Clans Unity Hospitals, DEF 280 through DEF 282. You
6 had an opportunity to read that?

7 A Correct.

8 Q Is that an accurate statement of the
9 policy currently?

10 A Yes.

11 Q And it indicates that instrument
12 decontamination begins at the point of use.

13 A Correct.

14 Q Do you know what point of use means?

15 A When the provider is using it.

16 Q And then once they are used, they are put
17 inside a plastic bag labeled biohazard.

18 A Correct.

19 Q And then the policy is to then transport
20 it to the designated holding area.

21 A Correct.

22 Q And then contaminated items are to be
23 placed in the designated holding area inside the
24 designated container labeled biohazard.

25 A Correct.

1 Q And then sprayed evenly with the Steris
2 Pre-Klenz, K-L-E-N-Z, instrument transport gel. Is
3 that accurate?

4 A Yes.

5 Q And when I look at Omaha-Winnebago IHS
6 hospital policy for decontamination, point of use,
7 preparation and transport, which was effective 9-14
8 of '16, and this was put together by Heather Mentzer
9 from central supply, as was Twelve Clans, also done
10 by Heather Mentzer -- it was the exact same policy;
11 is that right?

12 A I don't know. I haven't seen that one.

13 Q I'll have you look at that.

14 A (Witness complies.) Yes. They look very
15 similar.

16 Q And according to that policy, the
17 responsibility for this policy is, quote, "the
18 responsibility of everyone who comes in contact with
19 them."

20 A Correct.

21 Q Let the record reflect that I'm handing
22 you what is marked DEF 367, which is a schedule
23 provided by the government. When you have had a
24 chance to look at that, let me know.

25 A (Witness complies.)

1 Q This says at the top March 19 through
2 April 1, and this is a schedule; is that right?

3 A Correct.

4 Q And it has your name on it, Laura Donohue,
5 RN?

6 A Donohue.

7 Q Donohue. I apologize. And it says next
8 to that OPD. What's OPD mean?

9 A Outpatient department.

10 Q And then I don't know if I understand the
11 letters as you follow over. It looks like a D.

12 A For day shift, 8 to 4:30. On Monday I
13 worked 10 to 6:30.

14 Q So this document shows when you would have
15 worked during that period.

16 A Correct. It also has the schedules of all
17 the other nurses that worked in the OPD department
18 as well.

19 Q Sarah Robertson, Rachena Snyder, Sophia
20 Perttula, Christine Campbell and Genevieve
21 Pipeonhead; is that right?

22 A Correct.

23 Q And Elizabeth Roberts.

24 A That's upstairs.

25 Q Okay. Then in hers -- next to hers it

1 says OPP. What's that mean?

2 A Outpatient procedures.

3 Q And that would be the same for the
4 government's 371, where it has you on the schedule
5 from April 16 through April 29.

6 A Correct, as well as all the other nurses
7 that were scheduled in the outpatient.

8 Q And then through May 13.

9 Let's break for one minute.

10 (Recess taken at 10:02 to 10:04 a.m.)

11 Q I think there is a podiatrist in North
12 Sioux City called Donahue. That's no relation to
13 you, is it?

14 A No.

15 MR. KING: I don't have any other
16 questions for you. Thank you so much for your
17 time.

18 MS. DRULEY: I have none.

19 Laura, you have the right to read your
20 deposition to ensure that Marcia has taken down
21 everything that was said today accurately, or
22 you can waive that right. It's up to you. If
23 you opt to read and sign, you have 30 days to
24 do so.

25 THE WITNESS: I would like to read and

1 sign it.

2 * * *

3 *END OF PROCEEDINGS AT 10:04 a.m., 5-19-21*

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1 CERTIFICATE OF REPORTER

2

3 I, Marcia L. Mahon, Certified Shorthand
4 Reporter in and for the State of Iowa, do hereby certify
5 as follows:

6 1. That the deponent aforementioned was duly sworn
7 prior to the taking of this deposition.

8 2. That I took down in shorthand correctly the
9 testimony of said deponent and have caused the same to be
10 transcribed, and that this deposition is a true and
11 correct record of the testimony given by said deponent at
12 the time I affix my signature to this certificate.

13 3. I further certify that I am not related by
14 consanguinity or affinity within the fourth degree to any
15 party, his attorney, or any employee of any of them; that
16 I am not financially interested in this action, and that
17 I am not the attorney or employee of any party.

18 To all of which I have verily affixed my
19 signature this _____ day of _____, _____.
20

21

22 _____
23 MARCIA L. MAHON, CSR, RPR
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25